

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 803 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES
 2. To be referred to the Reporter or not? YES.
 3. Whether Their Lordships wish to see the fair copy of the judgement? NO.
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO.
 5. Whether it is to be circulated to the Civil Judge? NO.
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RAMJI JINABHAI ALIAS JIVANBHAISAVALIA -DECD.THR0'HEIRS

Versus

HIRALAL U THAKAR

Appearance:

MR HARESH H PATEL for Petitioners
NOTICE SERVED for Respondent No. 1, 4, 5, 6
UNSERVED-EXPIRED (N) for Respondent No. 2
MS LILU K BHAYA for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/11/98

ORAL JUDGEMENT

1. The claimants-petitioners by this civil Revision Application under Section 115 of the Code of Civil Procedure, 1908, have challenged the order of the Additional Sessions Judge, Rajkot, dated 20-3-87, passed below Exh.15, in Claim case No.548 of 1995, in which the prayer made by them for grant of interim compensation under Section 140 of the Motor Vehicles Act, 1988, has been rejected.

2. Heard the learned counsel for the parties and

perused the impugned order.

3. From the impugned order of the court below I find that the victim Ramji Jinabhai sustained injuries in a motor vehicular accident caused in between the Chhakdo rickshaw and Truck. He has been admitted in a hospital for few days and then he expired.

4. It is true that he died on the very day on which he was discharged from the hospital, but it is not the case in which the court is concerned to go on niceties of the issue of the fact or the law at this stage. The court is only concerned with the fact that the person, injured, sustained injuries in a motor vehicular accident, the offending vehicles are responsible for causing the accident and the injuries resulted into some permanent partial disablement or death of the victim. From the order impugned in this revision, I find that the victim was initially treated in the Irvin Hospital, but he has been referred to the higher center. The very fact that he has been referred to the higher center goes to show that his injuries were serious. Merely because at this stage, the Court has not found any relation in between the injuries sustained in the motor vehicular accident and the death of the injured for the reason that the post mortem report has not been produced, the denial of benefit of benevolent beneficial provisions as contained in Section 140 of the Act to his dependents is arbitrary and unjustified. At this stage even if some doubt is created in mind of the tribunal regarding relation between the injuries sustained in the accident and the death of the injured, but when it is established that the accident victim has sustained injuries in a motor vehicular accident and the offending vehicle has been identified, the benefits have to be given to the claimants and the order should have been passed in favour of him for awarding interim compensation.

5. It is not the stage where a final verdict has to be given regarding the cause of death of the victim of motor vehicular accident as result of the injury or otherwise other cause, that is the matter to be decided after taking the evidence of the parties.

6. Section 140 of the Motor Vehicles Act, 1988 provides for payment of compensation in certain cases on the principle of "no fault liability". In a case where death or permanent disablement of any person has resulted from an accident arising out of use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or as the

case may be, the owners of the vehicles shall, jointly and severally be liable to pay compensation in respect of such disablement in accordance with the provisions of this section. In the case of death of any person this amount is fixed at a sum of Rs.50,000/= and in a case of permanent disablement, this amount is a sum of Rs.25,000/= In a case for payment of compensation on the principle of "no fault liability" as provided under aforesaid section, the claimant is not required to plead and establish that death or permanent disablement in respect of which the claim has been made was due to any wrongful act or negligence or default of the owner or owners or vehicle or vehicles concerned or of any other person. This section further provides that a claim for compensation under this provision shall not be defeated by reason of any wrongful act or negligence or default of the person in respect of whose death or permanent disablement the claim has been made nor the quantum of compensation recoverable in respect of such death or permanent disablement shall be reduced on the basis of share of such person in the responsibility for such death or permanent disablement. A close scrutiny of this section leaves no doubt that for entitlement of interim compensation on the principle of "no fault liability" the Tribunal is only concerned to see at this stage that the death or permanent disablement of a person has resulted from an accident arising out of use of motor vehicle or motor vehicles. The claimant for entitlement of this amount of interim compensation on the principle of "no fault liability" is not required to plead and establish that death or permanent disablement in respect of which the claim has been made was due to any wrong act, negligence or default of the owner or owners of the vehicle or vehicles concerned or any other person. Similarly, it is not a ground to deny the benefit of this interim compensation on the ground that the deceased or the injured, as the case may be, was responsible for such death or permanent disablement. The object of Section 140 is to speed up payment of compensation on "no fault liability" principle. The legal representative of a victim in case of fatal accident or the injured in the case of injury case are under this benevolent provision entitled to get minimum amount of interim compensation expeditiously. In fact and substance, the provision as contained under Section 140 of the Motor Vehicles Act, 1988, constitute a major part of social justice. In the case of *Tithi v. Motor Accident Claim Tribunal*, reported in 1996(1) TAC 96, the Kerala High Court has observed that the assess to the justice theory vigorously applies in the field of litigation. The ends of litigation is always attaining of social justice. While deciding a

petition under Section 140 of the Act aforesaid, the Tribunal or the Court, as the case may be, shall not forget the enshrining principles of assess to justice theory behind the legislative measure. What is contained in sub-section 3 and 4 of Section 140 of the Act is a clear legislative mandate in favour of assessing of justice theory. The expression arising out of the use of motor vehicle in Section 140 of the Motor Vehicles Act, 1988, enlarges field of protection made available to the victims of an accident and is in consonance with the beneficial object underlying the enactment aforesaid. Fruitfully reference may have also to the decision of the Apex Court in the case of Gujarat State Road Transport Corporation, Ahmedabad, v. Ramanbhai Prabhubha reported in AIR 1987 SC 1690 where the Apex Court has observed that this part of the Act, i.e. Section 140 of the Motor Vehicles Act, 1988, herein is clearly departure from usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for the death or permanent disablement caused on account of motor vehicle accident.

7. Keeping in view the underlying socio-economic object in Section 140 of the Motor Vehicles Act, 1988, and the decision of the Apex Court in the case of Gujarat State Road Transport Corporation v. Ramanbhai Prabhubha (*supra*), I am satisfied that the approach of the learned tribunal in this case to deny benefits of interim compensation to the claimant-petitioner herein is wholly perverse and the same cannot be allowed to stand. It is not in dispute that Ramji Jinabhai @ Jivanbhai Savalia, the deceased, has been victim of motor vehicle accident and he sustained injury in that accident. He has been hospitalized for some time for undergoing treatment for those injuries and ultimately he died, though it is a different matter that, on the very day on which he was discharged from the hospital. It is a matter of inquiry no doubt as to what relation is there in between injuries sustained by the deceased in the motor vehicle accident and his death but if we go by seriatum of the facts and events of the case at this stage, the Court is only concerned to see that he sustained injury arising out of a motor vehicle accident. Some semblance or relevance may be there on this question at the most whether it will fall under the category of permanent disablement or death and as a result thereof whether he is entitled for Rs.50,000/= or Rs.25,000/= by way of interim compensation, but in such matters also, in my view, the benefit should go to the injured or to the defendant of the deceased, as the case may be. The obvious reason to

give this benefit to this category of persons and which is clearly borne out from Section 140 of the Act itself is that whatever amount of compensation is given to the injured or the claimant in a case of fatal injury is ultimately deductible from the amount of final compensation found on adjudicating payable to him and at that stage, if ultimately the Court considers that it is a case of only a permanent disablement then accordingly excess of the amount of interim compensation paid can be deducted but denial of this benefit at this stage on the ground given by the tribunal certainly amounts to defeating the benefits of a benevolent provisions to the claimants in this case.

8. As a result of this, the learned trial court is totally perversed in the matter and as such the impugned order cannot be allowed to stand.

9. In the result, this Civil Revision Application is allowed and it is hereby ordered that Rs.50,000/- and interest therein at the rate of 12 % per annum from the date of application till the date of deposit thereof shall be paid to the claimants-petitioners, jointly and severally by the respondent No.3 and 6. The aforesaid amount and interest therein shall be deposited by the respondent No.3 and 6 jointly ad severally before the trial court where the claim case is pending, within a period of one month from the date of receipt of the copy of this order. On deposit of this amount, the court below is directed to invest the same in a scheduled bank in the long term Fixed Deposit Receipt initially for a period of 5 years and the monthly interest accrues on the amount of interim compensation be paid to the claimants regularly. As this is claim case of the year 1995, the learned trial court is directed to decide this claim within a period of six months from the date of receipt of writ of this order.

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